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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,336	08/01/2003	Freddie Chang	64182-5001	3582
24574	7590	01/27/2006	EXAMINER	
JEFFER, MANGELS, BUTLER & MARMARO, LLP 1900 AVENUE OF THE STARS, 7TH FLOOR LOS ANGELES, CA 90067			AGARWAL, MANUJ	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/632,336

Applicant(s)

CHANG, FREDDIE

Examiner

Manuj Agarwal

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8-1-03</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the hemispherical bottom 13 having a diameter greater than the diameter of the opening in which it is disposed must be shown or the feature(s) canceled from claim 3. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The specification is rejected under 35 U.S.C., first paragraph for failing to provide an adequate written description. It is not clear how the materials feldspar, magnesium oxide or zirconium oxide would emit far infrared radiation. Far infrared is a range within the infrared spectrum that is characterized by its thermal properties. Chemicals such as those aforementioned require a chemical reaction to take place in order for heat to be emitted. In order for radiation to be emitted from a chemical, it must either be radioactive, or have an electron move in energy levels. Since neither will occur during the placement of these stable compounds on the massage protrusion, it is unclear how these chemicals will emit far infrared radiation.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Neither the specification nor the drawings detail the hemispherical bottom having a diameter greater than the diameter of the opening. An arresting ring 12, not a hemispherical bottom 13 is shown to have such a dimension.

Claims 11,23 are rejected under U.S.C. 112, first paragraph, as failing to comply with the written description requirement, as noted in the above rejection of specification. It is unclear how the far-infrared converting material would actually function to radiate far infrared radiation, or heat.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether the massage protrusion or the massage pad structure has a chamber accessible through an opening.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,6-8,14-16,19,20,28 are rejected under 35 U.S.C. 102(b) as being anticipated by Chang (US 5,682,690).

Regarding claim 1, Chang discloses a massage pad structure having a plurality of openings/chambers 311 in which a massage protrusions 4 are disposed. Fig 3 shows the massage protrusion comprising a hemispherical top 40 disposed on the top surface, sole 31. When a user places his/her foot on the hemispherical top, a vertical force is applied and the top is depressed further into the chamber. The massage protrusion 4 further comprises a root section 402 coupled to hemispherical top through the opening 311. This root section is also movably disposed in and limited by the chamber following the same logic.

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Regarding claim 2, massage protrusion 4 comprises connecting pillar 40.

Regarding claim 3, root section 402 comprises a hemispherical bottom with a diameter greater than that of the opening. The hemispherical bottom is coupled to the connecting pillar.

Regarding claim 6, an elastic tension member, plastic 40 is disposed in the chamber and supports the root section by providing a "cushioning effect (col 2 line 50).

Regarding claim 7, see fig 3 for an illustration of the claimed features.

Regarding claim 8, the massage protrusion 4 resembles a water drop shape, with a tapered portion provided at the junction of the hemispherical bottom 402 and neck section 40.

Regarding claims 14,28 see fig 2. A mat 31 having a plurality of holes, a pad plate 33 and a middle layer 32 sandwiched between the two are shown. See rejection of claim 1 for the remaining claimed features.

Regarding claims 15,16,19, 20, see respective rejections of claims 2,3,6,7.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4,5,17,18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang in view of Horibata (US 5,752,329).

The Chang reference lacks an arresting ring disposed at the bottom portion of the connecting pillar. Horibata discloses a massaging surface that at least one stimulating piece, or massage protrusion 5 (col 3 line 52) that is shown to comprise a connecting pillar and an arresting ring. The arresting ring is shown to be larger in diameter than the opening in which the massage protrusion is enclosed. It would have been obvious to one of ordinary skill at the time the invention was made to provide the massage protrusion of Chang with an arresting ring with a larger diameter than the opening in which it is enclosed as taught by Horibata in order to prevent the escape of the massage protrusion.

Claims 9,12, 21,26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang in view of Shen (US. 5,096,188).

Regarding claims 9,21, Chang lacks a magnetic member embedded in the hemispherical top of his massage protrusion. Shen discloses a massage pad structure that has a plurality of openings for the insertion of massage protrusion 2. This protrusion comprises a root section coupled to a hemispherical top. Fig 3 shows element 23, a magnet embedded in the hemispherical top. It would have been obvious to one of ordinary skill at the time the invention was made to provide a magnet to the hemispherical top of the massage protrusion of Chang as taught by Shen in order to provide the foot with the benefits of magnetic therapy.

Regarding claims 12,26, the said magnet of Shen is embedded in a groove. It would have been obvious to one of ordinary skill at the time the invention was made to provide a groove for the insertion of a magnet or other therapeutic material.

Claims 10,22, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang.

Regarding claims 10,22 it would have been obvious to one of ordinary skill at the time the invention was made to construct the massage protrusion out of a ceramic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 25, Chang is silent with regard to any use of an attachment layer disposed on a lower surface. However, the examiner takes official notice that the use of an attachment layer to join elements in footwear is old and conventional. Therefore it would have been obvious to provide the footwear as taught by Chang with an adhesive interface on one of the lower layers to facilitate combining the elements together.

Claims 13,27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang in view of Kim (US 6,434,859).

Chang lacks a massage pad structure that contains a hemispherical top that includes an opening on a top surface. Such a structure is disclosed by Kim in figs 3 and 4. An opening 4 is shown on the top surface of massage protrusion 2 for the exhaustion of air. It would have been obvious to one of ordinary skill to provide the footwear of Chang with an opening as taught by Kim in order to allow the release or deposit of material into the massage protrusion.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang in view of Hook (US 4,509,510).

Chang lacks a dirt isolating layer that covers the plurality of massage protrusions. This structure is disclosed by Hook, who teaches a massaging device that comprises a air tight cover 14 set over a plurality of massage protrusions 12. This arrangement would isolate the massage protrusions and prevent the intrusion of dirt or other particles into their vicinity and crevices. It would have been obvious to one of ordinary skill to provide the footwear of Chang with a dirt isolating layer as taught by Hook in order to prevent the intrusion of dirt and/or other particles into its crevices.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

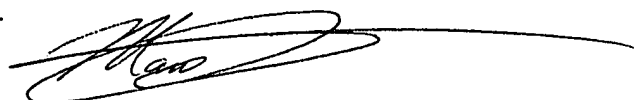
1. US 2003/0176820. Dabir. Apparatus and Method for Pressure Management Having Temperature Controlled Air Flow. A dirt isolating layer 48 that covers a plurality of massage protrusions.
2. US 4,414,963. Kunz. Massage Devices. Massage protrusions movable disposed on a massage pad structure.
3. US 5,186,703. Huang. Walk Exercise Floor. Massage protrusion for the foot.
4. US 4,598,484. Ma. Footwear. Movable disposed massage protrusions.
5. US 5,860,229. Morganstern. Inlay Sole with Massaging Knobs.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuj Agarwal whose telephone number is (571) 272-4368. The examiner can normally be reached on Mon to Fri 9:00 AM 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen K. Cronin can be reached on (571) 272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Manuj Agarwal
Patent Examiner

MA



Stephen K. Cronin
Primary Examiner